

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HILLIS HOMES, INC.,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)
)

PCHB Nos. 954 and 962

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

PER W. A. GISSBERG:

A formal hearing on these consolidated appeals came on before Board members W. A. Gissberg (presiding) and Art Brown on July 23, 1976, in Everett, Washington.

Hillis Homes, Incorporated, (appellant) appeared by and through its attorney Frank J. Woody; respondent by its attorney, Keith G. McGoffin.

Having heard the testimony and being fully advised, the Board makes
and enters the following

1 FINDINGS OF FACT

2 I

3 Pursuant to RCW 43.21B.260 respondent has filed its Regulation 1
4 with the Pollution Control Hearings Board and official notice thereof
5 is hereby taken.

6 II

7 Appellant at all times herein mentioned was a corporation engaged in
8 the business of constructing residential dwellings near Seattle, in King
9 County, Washington in a development known as Northside Terrace. The
10 number of homes then under construction was estimated to be between 12
11 and 15. It is not clear whether the real property is owned by the
12 corporation or by Larry Hillis, individually. At any event, most of the
13 construction work is accomplished by appellant's use of independent
14 contractors. Such ones do the foundation, plumbing, wiring, framing,
15 brickwork, roofing and siding work. Appellant's employees, as
16 contrasted with independent contractors, affix a 1/8 inch aluminum-
17 faced "sub-siding." By November 10, 1975, the buildings under
18 construction had already had the "sub-siding" affixed and either had
19 been or were ready to have siding affixed. (Exhibits R-6 and R-9.)

20 III

21 The weather, on November 10 and 13, 1975, was partly cloudy with
22 rain "off and on." The temperature was between 50° and 60° F.

23 IV.

24 On November 10, 1975, a man working at the site as a bricklayer but
25 who refused to identify himself, stated that he was employed by Hillis
26 Homes and admitted that he had started a small (3 foot x 1 foot) open

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1 fire which contained visqueen, cardboard and scrap wood. He also
2 stated that it had been used for "cooking purposes" although no cooking
3 utensils were at or near the fire nor did respondent's inspector
4 ask and require the workman to produce them.

5 V

6 On November 13, 1975, one Charles Christensen, a carpenter who
7 stated that he worked for Hillis Homes, Inc. but who was putting on
8 siding, admitted that he had started a 4 foot x 1-1/2 foot open fire of
9 scrap lumber. He was wearing no coat.

10 VI

11 There was no evidence from which the Board can determine whether or
12 not the persons who ignited the fires were actual subcontractors or
13 employees of subcontractors. The Board infers that if one was the
14 subcontractor, a normal response to an inquiry as to who "employed
15 him" or who he "worked for" would be that he worked for Hillis Homes,
16 Inc. On the other hand, the Board infers that if one was an employee of
17 a subcontractor, the normal response to such a question would be to
18 give the name of the person (subcontractor) from whom he receives his
19 compensation.

20 VII

21 Section 9.02(b)(3) and (4) of respondent's Regulation 1 makes it
22 unlawful for any person to cause or allow any outdoor fire without a
23 permit or containing materials of the type hereinabove described.
24 However, it is not unlawful to cause or allow "Small outdoor fires for
25 pleasure, religious, ceremonial, cooking, or like social purposes."
26 Respondent's regulation makes it "prima facie evidence that the person

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1 who owns or controls property on which an outdoor fire occurs has
2 caused or allowed said outdoor fire."

3 VIII

4 Respondent issued notices of violation for each outdoor fire
5 and imposed civil penalties of \$50.00 for each such violation.

6 IX

7 Any Conclusion of Law hereinafter recited which should be deemed
8 a Finding of Fact is hereby adopted as such.

9 CONCLUSIONS OF LAW

10 I

11 The burden of proving a violation of its regulations rests upon
12 respondent. It is aided in that burden by its ability to make out a
13 prima facie case by proving that appellant owns or controls the
14 property on which the outdoor fire occurred. The only testimony on
15 ownership of the property was that it was owned by one Larry Hillis, not
16 appellant herein. The record is silent as to who controlled the
17 property, nor can we infer that appellant controlled the same.

18 II

19 After weighing the testimony and inferences therefrom, we find the
20 evidence to be evenly balanced. Thus, respondent has failed to prove
21 its case. We cannot speculate on the legal relationship between the
22 corporation and the persons who admitted that they ignited the fires.

23 III

24 In view of the foregoing, it is unnecessary, but desirable, to
25

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1 discuss the remaining contentions of the appellant. As to the purpose
2 of the November 10 fire, the only testimony came from respondent's
3 witness that it was for "cooking" and we have absolutely no basis to
4 find the hearsay statement to be false.

5 With respect to the November 13 fire, there was no evidence that
6 it was for purposes of "pleasure." The argument that it must have been
7 used for hand warming and it therefore constitutes pleasure is not well
8 taken.

9 An open fire used for hand warming purposes does not bring it
10 within respondent's regulation allowing fires for "pleasure . . . or
11 like social purposes."

12 IV

13 The notices of violation and civil penalties should be vacated.

14 V

15 Any Finding of Fact which should be deemed a Conclusion of Law
16 is hereby adopted as such.

17 ORDER

18 The notices of violation and imposition of civil penalties are
19 reversed and vacated as to this appellant.

20 DONE at Lacey, Washington, this 9th day of August, 1976.

21 POLLUTION CONTROL HEARINGS BOARD

22 
23 W. A. GISSBERG, Member

24 
25 ART BROWN, Member

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